

COMMISSIONERS' ORDINANCE NO. _____

AMENDING §§ 96.70 AND 96.99 OF THE COVINGTON CODE OF ORDINANCES, "TABLE AND SEATING PLACEMENT" AND "PENALTY," TO SPECIFY THE HOURS OF OUTDOOR SERVICE, REQUIRE PATRONS TO BE SEATED, REQUIRE LICENSEES TO CLEAN UP SIDEWALK AND ADJACENT CURBS AFTER OUTDOOR SERVICE IS FINISHED, AND OTHER CHANGES.

* * *

WHEREAS, a current City of Covington ordinance allows tables and seating to be placed in the public right-of-way within historic areas of the City (the "ordinance"); and

WHEREAS, certain updates and modifications to the ordinance are necessary to ensure the tables and seating are appropriate to the historic character of these areas and comply with the applicable standards and guidelines related to aesthetics; and

WHEREAS, such updates and modifications to the ordinance are necessary to ensure the safety, health and general well-being of Covington residents.

NOW, THEREFORE,
BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF
THE CITY OF COVINGTON, KENTON COUNTY, KENTUCKY:

Section 1

That § 96.70 of the Covington Code of Ordinances is hereby amended as follows:

TABLE AND SEATING PLACEMENT

§ 96.70 PERMIT REQUIRED.

(A) (1) No person or entity shall place tables, or seating for tables, ~~or benches adjacent to the tables~~ (hereafter "seating") on the public right-of-way, including public sidewalks ("public sidewalks"), unless that person has first obtained a permit license for the tables and seating from the City Manager or his or her designee (hereafter collectively "City Manager"). This license must be obtained for all tables and seating on public sidewalks or plazas ("the licenses premises") and this license shall be automatically renewed on an annual basis upon the payment of the annual fee as set forth in subsection (G) below.

(2) Permits Licenses for tables and seating shall only be issued for areas on the National Historic Register designated by the Commonwealth of Kentucky.

(3) Permits Licenses for tables and seating shall only be issued for tables and seating that are of a design, size, and scale appropriate to the character of the National Historic Area in which the tables are to be located. The City Manager shall be empowered to enforce this provision, using the Covington historic guidelines as a guide to making such a determination.

(4) Permits Licenses for tables and seating may only be permitted in locations on the public right-of-way that are deemed appropriate by the City Manager. The City Manager may, ~~in his or her discretion,~~ refuse to grant ~~permits~~ a license that he or she believes may be injurious to the health, safety, and well-being of the pedestrians and the general public, causes non-compliance with the Americans With Disabilities Act, blocks or inhibits vehicle sightlines, or creates a public nuisance, as defined by the city's nuisance ordinance.

(B) The ~~permit~~ license shall specify the number of tables and chairs and the specific location of the tables and seating. The ~~permittee~~ licensee shall place the tables and seating only in the areas designated ~~on~~ in the ~~permit~~ license. The applicant shall provide the following to the City Manager before qualifying for the issuance of a ~~permit~~ license:

(1) The name of the applicant, including the type of organization, e.g. proprietorship, partnership, corporation, limited liability company ~~and so forth,~~ and the person responsible for compliance with this subchapter;

(2) The address of the applicant;

(3) A map or diagram drawn to scale depicting the number, type, and dimensions of tables and seating. The map shall illustrate the width of the sidewalk and specifically identify where the tables and seating or benches will be located;

~~——(4) The proposed location and the width of the sidewalk where the tables and seating or benches will be located;~~

~~——(5) A license agreement which includes a release and indemnification provision releasing and indemnifying the city from personal injury and property damage liability resulting from the use of these tables and seating;~~

~~——(6) Certification that the applicant will provide adequate trash receptacles outdoors on request by the City Manager for the tables and seating and certification that the applicant will empty these receptacles at reasonable time intervals necessary to ensure that the receptacles are emptied so that they do not overflow with trash and debris onto the public right of way.~~

~~——(7) Certification that the applicant is the owner of the property abutting the sidewalk or if a lessee of the property, a certification of ownership from the lessee's landlord must be submitted.~~

~~_____ (8) Any other information reasonably required by the City Manager to properly administer the intent of this subchapter.~~

(C) The following provisions and certifications shall be conditions of any license granted by the City Manager:

(1) Inclusion of a release and indemnification provision releasing and indemnifying the city from personal injury and property damage liability resulting from the use of the tables and seating;

(2) Certification that the applicant will provide adequate trash receptacles outdoors for the tables and seating and certification that the applicant will empty these receptacles at reasonable time intervals necessary to ensure that the receptacles are emptied so that they do not overflow with trash and debris onto the public right-of-way;

(3) Certification that the licensee will clean the right-of-way on which tables and seating are placed, including sidewalks and abutting curbs and gutters, of all litter and debris each night after outdoor service is finished.

(4) Certification that the license will permit outdoor service until 12:45 a.m., with all outside seating prohibited after 1:00 a.m. every night of the week. An exception shall be the public plaza around the Goose Girl Fountain, where on Sunday through Thursday, the license will permit outdoor service until 10:45 p.m. with all outside seating prohibited after 11:00 p.m., and on Friday and Saturday nights, the license will permit outdoor service until 11:45 p.m. with all outside seating prohibited after 12 midnight.

(5) Certification that all outdoor music over public sidewalks or plazas, whether live or amplified by outdoor speakers, shall cease by 10:00 p.m. on Sunday through Thursday and 11:00 p.m. on Friday and Saturday. This provision preempts all other City ordinances allowing outdoor music to be played until a later time, except provisions concerning special events and festivals;

(6) Certification that the applicant is the owner of the property abutting the sidewalk, or if a lessee of the property, a certification of ownership from the lessee's landlord must be submitted;

(7) Licensee, at its sole expense, shall maintain comprehensive general liability insurance, protecting against all claims for personal injury, death or property damage occurring upon, in or about the licensed premises resulting from the use of occupancy thereof, with a minimum of \$50,000 in coverage and limits acceptable to the City for the entire term of the license agreement and any extension thereof. The City must be named in this policy as an additional insured entity. The licensee shall include copies of all policies of insurance with evidence of the payment of the premiums thereon with his, her or its application. Licensee shall deliver to the City at least ten days prior to the expiration of such policy.

evidence that it has been renewed. All policies of insurance carried hereunder shall provide that they cannot be canceled without giving at least ten days prior written notice to the City and shall be written by companies licensed to write insurance in the Commonwealth of Kentucky and reasonably satisfactory to the City. Any insurance carried by a licensee on his, her or its own property or for his, her or its own benefit in connection with this ordinance shall contain a clause waiving any claim by the insurance company for subrogation against the City: and

~~(7)~~ (8) Any other information reasonably required by the City Manager to properly administer the intent of this subchapter.

~~(C)~~ (D) A four-foot pedestrian way shall be kept clear through the licensed premises at all times ("pedestrian easement"). Tables and seating shall not be allowed in this pedestrian easement. Service and consumption of the licensee's food and drink shall be allowed only to those who are seated in the licensed premises. All seating must accompany tables. This requirement will be strictly enforced.

~~(D)~~ (E) No alcoholic beverages shall be served or consumed on the public sidewalk, unless the portion of the public sidewalk where the permitted tables and seating are located is included in the "licensed premises" for a licensed liquor by the drink restaurant, tavern, or dining facility as approved by the local Alcoholic Beverage Control Administrator and the state Department of Alcoholic Beverage Control Department or otherwise allowed by law and the license holder enters into a separate license agreement with the city, as set forth in § 96.70(B)(5).

(F) It shall be the responsibility of the licensee to maintain the licensed premises in orderly fashion, including requiring that all persons within the licensed premises behave in an orderly fashion and not generate excessive noise. This requirement will be strictly enforced.

~~(E)~~(G) The cost of the permit license for tables placed on public sidewalks or plazas shall be \$20.00 per table seating two customers (also known as a "two-top") and \$40.00 per table seating four customers (also known as a "four-top") annually. Payment shall be made to the City Manager's office by January 1 of each year. Upon issuance of a license agreement by the City and payment of the annual license fee by the licensee, the licensee shall be permitted to place tables and seating on the public sidewalks on a continuous basis from March 1 until October 31. Tables and seating may not be placed on public sidewalks on a continuous basis from November 1 until February 28.

~~(F) The applicant must be the owner or lessee of the owner of the property immediately abutting the public sidewalk where the proposed tables are to be located. If a lessee is the applicant, the lessee must have the written consent of the property owner and said written consent shall be attached to the permit~~

~~application.~~ (H) Any license issued by the City to allow for placement of tables and seating on the public sidewalks shall not be assigned or transferred to third party without the prior written consent of the City Manager.

(I) A ~~permit~~ license may be revoked by the city upon seven days written notice upon a finding by the City Manager that the licensee has violated any terms of this subchapter, has failed to abide by the ~~commitments made in the application~~ terms or conditions set forth in the license, or upon a finding by the City Manager that the licensee has violated city ordinances or state or federal law. A license may also be revoked by the City Manager if the licensed establishment has been issued three or more citations for violating the City's noise control ordinance that resulted in a determination by a court or the City Code Enforcement Board that a violation existed, or the licensee or an employee of the establishment has been convicted of serving alcohol to a minor, within the past 12 months. If a license is revoked, the licensee shall not be eligible for to reapply for a license until one year has passed from the date of the license revocation. The ~~permittee~~ licensee may appeal this revocation to the city commission within seven days of the notice of revocation. If a former ~~permittee~~ licensee fails to appeal a ~~permit~~ license revocation within the time frame set forth herein, such decision shall not be subject to further review.

Section 2

That § 96.99 of the Covington Code of Ordinances is hereby amended as follows:

§ 96.99 PENALTY.

(A) Any violation of any provision of Chapter 96 et seq., except for §96.70, is classified as a civil offense pursuant to the authority of KRS 65.8808. The Code Enforcement Board shall have power to issue remedial orders and impose civil fines to enforce this section. Enforcement of this section shall be in accordance with the procedures outlined in the Code Enforcement Board guidelines located in §§ 92.16 through 92.23. Civil fines for violations of this section shall be those set forth in § 92.99(A). The city shall possess a lien on property, real or personal, for all fines, penalties, charges, attorney's fees, and other reasonable costs associated with enforcing this code, and the cost of placing of a lien on a personal or real property pursuant to this code. The lien shall be superior to and have priority over all other liens filed subsequently, except state, county, school district, and city taxes.

(B) In addition to the above civil penalties, a violator of any provision of Chapter 96 shall be guilty of a Class A misdemeanor.

(C) Any person or entity who violates any portion of § 96.70 may be issued a civil citation, with a fine in the amount of \$100.00 per day per violation not to exceed a total of \$5,000.00.

(1) When a citation is issued under this subsection, the person or entity to whom the citation is issued shall respond to the citation within seven days of the date that the citation is issued by either paying the civil fine set forth in the citation or requesting, in writing, a hearing before the City of Covington Code Enforcement Board to contest the citation. If a hearing is requested, the person requesting the hearing shall pay an administrative hearing fee in the amount of \$25.00 at the time of the written request of the hearing. If the person fails to respond to the citation within seven days, the person shall be deemed to have waived the right to a hearing to contest the citation and the determination that a violation was committed shall be considered final. In this event, the board shall enter a final order determining that the violation was committed and imposing the civil fine in the citation. An appeal from any final order issued by the board shall be in accordance with the procedures set forth § 92.19. The City of Covington may assess a lien against a violator who owns real property in accordance with the terms and procedures of § 92.20.

(2) In the event a civil citation is issued, and the ticket is not paid to the City of Covington Finance Department within seven days, excluding Saturdays, Sundays and holidays, after its issuance, and no hearing has been requested as set forth above, the City of Covington may issue a criminal citation. Any person who has been issued a citation and has not paid the civil fine, shall be charged with a Class B misdemeanor. The penalty upon conviction shall be a \$250.00 fine.

Section 3

That all ordinances or parts of ordinances in conflict herewith are to the extent of such conflict, hereby repealed.

Section 4

If any section, subsection, sentence, or clause of this ordinance is held invalid or unconstitutional by a court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions of this ordinance.

Section 5

That this ordinance shall take effect and be in full force when passed, published and recorded according to law.

MAYOR

ATTEST:

CITY CLERK

Passed: _____ (First Reading)

_____ (Second Reading)